

Federal Communications Commission

DA 99-313

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-235
Table of Allotments,)	RM-9187
FM Broadcast Stations.)	
(Pecos and Wink, Texas))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 3, 1999

Released: February 12, 1999

By the Chief, Allocations Branch:

1. In response to a petition filed by Ronald W. Latimer ("Latimer"), the Commission has before it for consideration the Notice of Proposed Rule Making, 12 FCC Rcd 20158 (1997), requesting the reallocation of Channel 247C1 from Pecos, Texas, to Wink, Texas, and modification of the construction permit for Station KKLY to specify Wink as the community of license. Latimer filed supporting comments in which he reaffirmed his interest in Channel 247C1 at Wink. No other comments were received in response to the Notice in this proceeding.

2. The proposed reallocation of Channel 247C1 from Pecos to Wink, Texas, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). As stated in the Notice, Wink is an incorporated community established in 1928 with a population of 1,189 people.¹ Wink is governed by a mayor and board of aldermen. The community of Wink has its own police department, water department, tax assessors and a U.S. post office. Wink has numerous businesses and civic organizations normally associated with a community of this size.

3. Latimer asserts that the reallocation of Channel 247C1 from Pecos to Wink, Texas, would result in a preferential arrangement of allotments under the Commission's FM allotment

¹ The population figures are from the 1990 U.S. Census.

priorities, since it would provide a first local aural transmission service to Wink without removing the sole local service from Pecos. Latimer states that while Wink has no local aural transmission service, Stations KIUM(AM) and KPTX(FM) would remain licensed to Pecos.

4. The reallocation proposal is consistent with the requirements set forth in Change of Community, *supra*. Station KKLY is an unbuilt station; thus, the reallocation would not result in the loss of "existing service." See Woodville, Mississippi, et al., 11 FCC Rcd 4712 (1996). Although we carefully evaluate proposals that result in a loss of existing reception service, since Station KKLY is not constructed, we do not consider removal of the channel from Pecos as presenting the same concerns with loss of service that would be represented by the removal of an operating station serving the community.² Wink is an independent community not located within an urbanized area. An engineering analysis has determined that although a 60 dBu signal would provide service to approximately 75% of the community of Odessa, Texas, the 70 dBu signal will provide minimal service to Odessa. Therefore, a Tuck analysis is not necessary.³ Even though the station is unbuilt, since a transmitter site change was proposed, the Notice requested Latimer to provide information regarding any potential gain and loss areas and also indicate the number of reception services which are now available within the gain and loss areas. Latimer failed to provide this information.

5. In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982).⁴ In this regard, our staff engineering analysis reveals that retention of the channel in Pecos would provide service to 673 people in a white area covering 2,182 square kilometers (843 square miles) and 20 people in a gray area covering 442 square kilometers (171 square miles).⁵ Further, Channel 247C1 at Pecos, a community of 12,069 people, would provide a second FM service and a third local service. Pecos receives two reception services. Reallocating the channel to Wink, a community of 1,189 people, would provide a first local service as there are no AM or FM channels allotted to the community. Wink receives four reception services. Our engineering analysis also shows that although there is a small white area which is uninhabited, the channel at Wink would provide service to 10,044 people in a gray area covering 755 square kilometers (292 square miles). Using the FM Priorities, the allotment

² See Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997).

³ See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D. C. Cir. 1951), RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁴ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁵ A white area, for purposes of FM allotments, is a geographical area that is not served by any full-time aural service and a gray area is one that is served by only one full-time aural service.

of Channel 247C1 at Wink would be considered under Priority 3), first local service, while retention of the channel in Pecos, because of the number of people in the white area, would be compared under Priority 1), first full-time aural service. Based upon our allotment priorities, retention of the channel in Pecos is superior to the proposed reallocation to Wink, because the existing arrangement of allotments would provide a first full-time aural service at Pecos over a first local service at Wink. Therefore, Latimer's requested reallocation of Channel 247C1 from Pecos, Texas, to Wink, Texas, must be denied.

6. Accordingly, IT IS ORDERED, That the petition for rule making filed by Ronald W. Latimer IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
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